

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
COMMUNITY COUPONS
FRANCHISING INC.,
MATTHEW ROSENCRANS,

Plaintiffs,

CIVIL CASE NO.:
19 Civ. 04455(JMA)(AYS)

NOTICE OF MOTION

- against -

EAGLE MARKETING
SOLUTIONS, LLC,
DENNIS BERNSTEIN,

Defendants.
-----X

PLEASE TAKE NOTICE, that upon the accompanying declaration of James Costo, Esq., dated June 16, 2021, with the exhibits annexed thereto, James Costo, Esq. will move this Court before the Hon. Anne Y. Shields, United States Magistrate Judge for the Eastern District of New York, at the United States Courthouse, Central Islip, Courtroom 830, Central Islip, New York 11722, for an Order pursuant to Local Rule 1.4 to be relieved as counsel for Plaintiffs COMMUNITY COUPONS FRANCHISING INC. and MATTHEW ROSENCRANS, in their individual and professional capacity in this action, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 16, 2021

/s/ James Costo, Esq.
JAMES COSTO

TO:

Community Coupons Franchising Inc.
100 Carney Street
Glen Cove, NY 11542

Matthew Rosencrans
6 Bowden Lane
Glen Head, NY 11545

Andrew Moskovitz, Esq.
JAVERBAUM WURGAFT
Attorneys for Defendant
EAGLE MARKETING SOLUTIONS, LLC
505 Morris Avenue
Springfield, NJ 07081

Stephen Slater, Esq.
THE LAW OFFICE OF DAVID S. KLAUSNER PLLC
Attorney for Defendant
DENNIS BERNSTEIN
150 Grand Street – Ste. 510
White Plains, NY 10601

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
COMMUNITY COUPONS
FRANCHISING INC.,
MATTHEW ROSENCRANS,

Plaintiffs,

19cv04455 (JMA)(AYS)

**DECLARATION IN
SUPPORT OF MOTION**

- against -

EAGLE MARKETING
SOLUTIONS, LLC,
DENNIS BERNSTEIN,

Defendants.
-----X

I, James Costo, hereby declare under penalty of perjury pursuant to 28 U.S.C. §1746 as follows:

1. I am an attorney licensed to practice in the State of New York, and I am licensed to practice in the Eastern District of New York.

2. In accordance with Rule 1.4 of the Local Rules for the United States District Court for the Eastern District of New York, this Declaration is respectfully submitted in support of my request to be relieved as counsel in this matter for Plaintiffs COMMUNITY COUPONS FRANCHISING INC. and MATTHEW ROSENCRANS (hereinafter "Plaintiffs").

3. In or about July 2019, Plaintiffs retained me under a written agreement to represent them in a lawsuit against Defendants EAGLE MARKETING SOLUTIONS, LLC (hereinafter "EAGLE MARKETING") and DENNIS BERNSTEIN. In accordance with our agreement, the Complaint was filed in or about August, 2019. Shortly thereafter,

Defendants filed their answers and Defendant EAGLE MARKETING asserted various counterclaims.

4. This matter relates to Plaintiffs' claims against Defendants for, *inter alia*, breach of contract, breach of fiduciary duties, and tortious interference with Plaintiffs' business, as well as Defendant EAGLE MARKETING's counterclaims for unpaid commissions and attorneys' fees.

5. Throughout the litigation of this matter, my clients and I have had disputes over prosecuting and defending this action, and due, in part, to the severe economic crisis caused by the global pandemic, Plaintiffs have not paid any of my legal fees, since providing the initial retainer.

6. While Plaintiffs have complied with Defendants' requests for disclosures, doing so has been difficult. I have experienced great difficulty in obtaining documents from my clients, which has led to various additional court conferences, and the imposition of "date certain" deadlines for the completion of discovery.

7. Most recently, I have had several conferences with Mr. Rosencrans relating to the continuation of the lawsuit, party depositions, and the necessity that payment be made in order to not only compensate me, but to also pay for deposition and other costs.

8. On June 15, 2021, the attorney-client relationship between Plaintiffs and me became irreparably broken. During a telephone conference, Mr. Rosencrans terminated me, and thereafter emailed a confirmation. A copy of the email is attached hereto as **Exhibit A**.

9. Under the New York Rules of Professional Conduct, a lawyer may withdraw from representing a client where, among other reasons, the client “[d]eliberately disregards an agreement or obligation to the lawyer as to expenses or fees.” Rule 1.16(c)(5) of the Rules of Professional Conduct. “It is well settled that non-payment of fees is a valid basis for the Court to grant counsel’s motion to withdraw ...” *Fischer v. Biman Bangladesh Airlines*, 1997 WL 411446 (S.D.N.Y., JULY 18, 1997 (citing case)). A client “deliberately disregards” a fee agreement for the purposes of the Rules of Professional Conduct “whenever the failure is conscious rather than inadvertent, and is not de minimis in either amount or duration.” N.Y. State Formal Op. 598 (1989)(decided under the former Disciplinary Rules of the Code of Professional Responsibility). Deliberate disregard of a fee agreement includes a client’s knowing non-payment of fees arising from an inability to pay. *Id.*

10. At this juncture, the attorney/client relationship that I have with Plaintiffs is irretrievably broken. Plaintiffs have terminated me and are unable/unwilling to pay any fees owed.

11. Based upon the foregoing, I respectfully request to be relieved as Plaintiffs’ counsel.

12. It is an undue hardship for me, a solo attorney, to be forced to not only continue to work and not be paid, but to also carry litigation related expenses.

13. I am not asserting a retaining or charging lien.

WHEREFORE, I respectfully request to be relieved as counsel.

Dated: June 16, 2021
New York, New York

Respectfully submitted,

/s/ James Costo
James Costo, Esq. (3308)

To:

Andrew Moskowitz, Esq. (via ecf)
Stephen Slater, Esq. (via ecf)

Community Coupons Franchising Inc.
100 Carney Street
Glen Cove, NY 11542
(via Email and USPS Priority Mail)

Matthew Rosencrans
6 Bowden Lane
Glen Head, NY 11545
(via Email and USPS Priority Mail)

EXHIBIT A



James Costo <costolaw@gmail.com>

Termination of Agreement Eagle, Bernstein

1 message

Matthew Rosencrans <matt@ccoupons.com>

Tue, Jun 15, 2021 at 3:06 PM

To: James Costo <costolaw@gmail.com>

As per our discussion on the phone. Due to dissatisfaction with your services, as well as financial concerns, I have elected to terminate our agreement on the Eagle Marketing, Dennis Bernstein matter. As conveyed by you in the conversation, no monies will be due your firm for services on this matter.

Thank you,

Matthew Rosencrans**Community Coupons Franchising Inc.**

100 Carney St, Glen Cove NY 11542

Tel: 516-676-3100

Cell: 516-456-7894

Fax: 516-740-0807

matt@ccoupons.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
COMMUNITY COUPONS
FRANCHISING INC.,
MATTHEW ROSENCRANS,

Plaintiffs,

- against -

EAGLE MARKETING
SOLUTIONS, LLC,
DENNIS BERNSTEIN,

Defendants.

19 Civ. 04455(JMA)(AYS)

**AFFIRMATION OF
SERVICE**

-----X
I, James Costo, declare under penalty of perjury that on June 16, 2021, I served a
copy of the attached Motion to be Relieved as Counsel: upon all other parties in this case
by Priority Mail and Email the following persons at their last known address:

Community Coupons Franchising Inc.
100 Carney Street
Glen Cove, NY 11542

Matthew Rosencrans
6 Bowden Lane
Glen Head, NY 11545

Service upon Defendants' counsel was made via ECF.

Dated: June 16, 2021

/s/ James Costo
James Costo, Esq. (3308)
11 Park Place, Suite 1100
New York, New York 10007
646.543.0406
costolaw@gmail.com